# TRANSCRIPT OF RECORD

## SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1923**

## No. 593

R. E. SHEEHAN COMPANY AND ÆTNA LIFE INSURANCE COMPANY, PLAINTIFFS IN ERROR,

*vs.*

GEORGE K. SHULER, AS STATE TREASURER OF THE STATE OF NEW YORK; JOHN D. HIGGINS, RICHARD H. CURRAN, AND FRANCIS PERKINS, AS AND CONSTITUTING THE STATE INDUSTRIAL BOARD OF THE STATE OF NEW YORK

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK

FILED OCTOBER 8, 1923

(29,903)

# (29,903)

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1923

# No. 593

R. E. SHEEHAN COMPANY AND ÆTNA LIFE INSURANCE COMPANY, PLAINTIFFS IN ERROR,

*vs.*

GEORGE K. SHULER, AS STATE TREASURER OF THE STATE OF NEW YORK; JOHN D. HIGGINS, RICHARD H. CURRAN, AND FRANCIS PERKINS, AS AND CONSTITUTING THE STATE INDUSTRIAL BOARD OF THE STATE OF NEW YORK

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK

INDEX



JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 12, 1923

[fol. a] STATE OF NEW YORK, ss:

## COURT OF APPEALS

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 12th day of June in the year of our Lord one thousand nine hundred and twenty-three, before the Judges of said Court.

Witness, The Hon. Frank H. Hiscock, Chief Judge, presiding.
R. M. Barber, Clerk.

[fol. a-1] [Title omitted]

REMITTITUR—June 13th, 1923

Be it remembered, That on the 22nd day of May in the year of our Lord one thousand nine hundred and twenty-three, R. E. Sheehan Co., Employers, & Ano., &c., the appellants in this cause, came here unto the Court of Appeals, by William H. Foster, their attorney, and filed in the said Court a Notice of Appeal and return thereto from the judgment and order of the Appellate Division of the Supreme Court in and for the Third Judicial Department. And State Industrial Board the respondent in said cause, afterwards appeared in said Court of Appeals by Carl Sherman, Attorney-General.

Which said Notice of Appeal and the return thereto, filed as aforesaid are hereunto annexed.

[fol. a-2] Whereupon, The said Court of Appeals, Mr. E. C. Aiken of counsel for the respondent appearing, and moved for judgment of affirmance, counsel for the appellant appearing, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed with costs.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the Appellate Division of the Supreme Court there to be proceeded upon according to law.

[fol. a-3] Therefore, It is considered that the said order be affirmed with costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Appellate Division of the Supreme Court, Third Judicial Department before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Appellate Division before the Justices thereof, &c.

R. M. Barber, Clerk of the Court of Appeals of the State of New York.

Court of Appeals, Clerk's Office

Albany, June 13, 1923.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

R. M. Barber, Clerk. (Seal of the Court of Appeals.)

---

[fol. 1-a] COURT OF APPEALS, STATE OF NEW YORK

Before the State Industrial Board, Respondent

In the Matter of

The Claim for Compensation under the Workmen's Compensation Law Made by the State Treasurer, Arising Out of the Death of EDWARD BURKE, Deceased, Respondent,

vs.

R. E. SHEEHAN COMPANY, Employer, and AETNA LIFE INSURANCE COMPANY, Insurance Carrier, Appellants

STATEMENT UNDER RULE 234

This is an appeal from an order of the Supreme Court, Appellate Division, Third Department, entered in the office of the Clerk of the Appellate Division, Third Department, affirming an award and decision of the State Industrial Board awarding $500 in accordance with subdivision 8 of section 15 and $500 in accordance with sub-[fol. 2-a] division 9 of section 15 of the Workmen's Compensation Law to be paid to the State Treasurer.

Proceedings were commenced by filing with the Industrial Commissioner, Employer's First Report of Injury, dated February 6, 1923. There has been no change of parties or attorneys since the commencement of this proceeding.

---

[fol. 1] SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT

Before the State Industrial Board, Respondent

[Title omitted]

NOTICE OF APPEAL

SIRS: Please take notice that R. E. Sheehan Company, employer, and Aetna Life Insurance Company, insurance carrier, hereby ap-

peal to the Supreme Court, Appellate Division, Third Department, from the award and decision of the State Industrial Board made and entered in the office of the Industrial Commission on the 14th day of March, 1923, and from such part of said award as awards $500 in accordance with subdivision 8 of section 15 and $500 in accordance with subdivision 9 of section 15 to be paid to the State Treasurer.

[fol. 2] Dated, Syracuse, March 22, 1923.

Yours, etc., William H. Foster, Attorney for Appellants, Office & P. O. Address 403 Union Building, Syracuse, N. Y. To Jos. H. Hollands, Esq., Clerk, App. Div., Third Dept., Albany, N. Y.; Hon. Carl Sherman, Atty. Genl., Capitol, Albany, N. Y.; Hon. Bernard L. Shientag, Industrial Commr., 124 E. 28th Street, New York City; Mrs. Chas. Greiner, Claimant, 529 Delaware St., Syracuse, N. Y.

---

State of New York

Department of Labor

Office of the Industrial Commissioner

Bureau of Workmen's Compensation

120 West Jefferson Street

Syracuse, N. Y.

NOTICE OF AWARD IN DEATH CASES IN WHICH THERE ARE NO PERSONS ENTITLED TO COMPENSATION

Case No. 626008-3.
Case of Edward Burke, Deceased.
Date March 14, 1923.

To R. E. Sheehan Co., Employer, 143 S. West St., Syracuse, N. Y., [fol. 3] and Mrs. Charles Greiner, 529 Delaware St., Syracuse, N. Y., and Aetna Life Insurance Co., Insurance Carrier, 411 Union Bldg., Syracuse, N. Y., and George K. Shuler, the State Treasurer, the Capitol, Albany, N. Y.; Robert F. Pentz, Cashier, Dept. of Labor, New York City; M. J. Wallace, Director, Dept. of Labor, N. Y. City:

You are hereby notified that at a meeting of the Industrial Board held 3-8-23 a decision and order was made in the above case as follows:

$100.00 for funeral expenses to be paid to R. E. Sheehan Co.
$500 in accordance with subdivision 8 of section 15, and $500 in accordance with subdivision 9 of Section 15 to be paid to the State Treasurer.

The Carrier is instructed to draw his check to the order of the "Treasurer, State of New York" or the "Industrial Commissioner, State of New York," and forward same to the Cashier, State Department of Labor, 124 E. 28th St., New York City.

No checks should be sent to any branch office.

The above copy of decision and order is sent to you pursuant to law.

(Signed) Henry D. Sayer, Industrial Commissioner.

---

[fol. 4] BEFORE STATE INDUSTRIAL BOARD

OBJECTIONS TO AWARD

The employer and insurance carrier object to the rendition of an award to the State Treasurer, under the provisions of Sub-divisions 8 and 9 of Section 15 of the Workmen's Compesation Law of the State of New York, upon the following grounds:

1. Such award is so unfair and unreasonable in amount, that to compel payment thereof will deprive the employer and insurance carrier of its property in contravention of the due process clause of the 14th Amendment to the Constitution of the United States.

2. Such award is in the nature of a tax, imposed only on the happening of a contingency and is of unequal application, in contravention of the equal protection clause of the 14th Amendment to the Constitution of the United States.

3. The award is unconstitutional in that it takes property without due process of law in violation of the State Constitution and Federal Constitution.

4. That it is in violation of the State Constitution and Federal Constitution in that it is not a proper exercise of the police powers of the State of the United States.

5. That it violates the provisions of the New York State Workmen's Compensation Law, Chapter 816 of the Laws of 1913 as amended and re-enacted by Chapter 41 of the Laws of 1914 constituting Chapter 67 of the Consolidated Laws as amended, in that it provides a payment by the employer to men other than employees.

6. That it is discriminatory legislation in that it levies a tax upon [fol. 5] only those industries which come within the provisions of Chapter 816 of the Laws of 1913 as amended and re-enacted by Chapter 41 of the Laws of 1914 constituting Chapter 67 of the Consolidated Laws as amended.

7. That the amount required to be paid is arbitarry and unjust and in violation of the police power of the State.

8. That it is in violation of the due process clause of the 14th Amendment of the Constitution.

STATE INDUSTRIAL BOARD

CONCLUSIONS OF FACT, RULING OF LAW, AND AWARD

[Title omitted]

This claim came on for hearing before the State Industrial Board at Syracuse, New York, on March 8, 1923.

Appearances: William H. Foster, Esq., Attorney for employer and insurance carrier.

[fol. 6] All the evidence having been heard and duly considered, the State Industrial Board makes its Conclusions of Fact, ruling of Law, and Award, as follows:

Conclusions of Fact

1. On February 3, 1923, the day on which Edward Burke sustained the injuries which resulted in his death on February 4, 1923, he resided at No. 119 Walton Street, Syracuse, New York, and was employed as a coal driver by R. E. Sheehan Co., with office and principal place of business at 143 S. West Street, Syracuse, New York; said employer being engaged in the coal business, and operating in connection therewith, trucks.

2. On February 3, 1923, while the said Edward Burke was engaged in the regular course of his employment, and while driving a load of coal for his employer to No. 543 Bryant Ave., Syracuse, New York, the wagon upon which he was sitting, and which he was driving, turned over at the corner of Milton and Humphries Streets, whereupon Edward Burke was thrown to the ground, and thereupon sustained injuries in the nature of an intestinal hernia, which caused his death on February 4, 1923; his death being the direct result of the injuries which he sustained on February 3, 1923.

The injuries, which resulted in the death of Edward Burke, were accidental injuries, and arose out of and in the course of his employment.

Edward Burke left him surviving no wife or child or children under the age of 18 years; and left him surviving no father or mother, or brothers or sisters, dependent upon him at the time he sustained the injuries which resulted in his death.

[fol. 7] There is no person or persons entitled to compensation under the Workmen's Compensation Law in respect of the death of Edward Burke, deceased.

Ruling of Law

This claim comes within the provisions of the Workmen's Compensation Law.

Award

Award of compensation is hereby made against R. E. Sheehan Company, employer, and Aetna Life Insurance Company, insurance carrier, to the State Treasurer in the sum of $500.00 in respect

of the death of Edward Burke, pursuant to subdivision 8 of Section 15 of the Workmen's Compensation Law; and further award is hereby made against R. E. Sheehan Company, employer, and Aetna Life Insurance Company, insurance carrier, to the State Treasurer, in the sum of $500.00, in respect of the death of Edward Burke, pursuant to the provisions of subdivision 9 of Section 15, of the Workmen's Compensation Law; and a further award is hereby made in the sum of $100.00 to R. E. Sheehan Company, on account of the funeral expenses of Edward Burke, deceased; and case is hereby closed.

Dated New York, May 3, 1923.
State Industrial Board, Richard H. Curran, Frances Perkins.

---

[fol. 8] BEFORE THE STATE INDUSTRIAL BOARD

STIPULATION

[Title omitted]

It is hereby stipulated that the facts in the above entitled matter are set forth in the second finding of fact hereto annexed and that the proof with reference thereto need not be incorporated in the record or further set forth, and that the sole question to be determined on appeal in this matter is the question arising out of the objections made to the award by the counsel for the insurance carrier, said objections being made at a hearing held before the State Industrial Board.

Carl Sherman, Attorney General. William H. Foster, Attorney for R. E. Sheehan & Company, Employer, and Aetna Life Insurance Company, Insurance Carrier.

---

[fol. 9] STATE OF NEW YORK:

APPELLATE DIVISION, THIRD DEPARTMENT—STATE INDUSTRIAL BOARD

AFFIDAVIT OF NO OPINION

[Title omitted]

STATE OF NEW YORK,
County of Onondaga,
City of Syracuse, ss:

William H. Foster, being duly sworn, says that he is the attorney for the appellant herein, and that no opinion or memorandum was given by the State Industrial Board upon its decision herein.

William H. Foster.

Subscribed and sworn to before me this 5th day of May, 1923.
Myron R. Brewster, Com'r of Deeds, Syracuse, N. Y.

[fol. 10] BEFORE STATE INDUSTRIAL BOARD

ORDER SETTLING AND FILING CASE

It is hereby ordered that the foregoing printed record is hereby settled as and for the record before the Appellate Division of the Supreme Court, Third Department, upon the appeal herein, and it is hereby ordered on file in the office of the Clerk of the Appellate Division of the Supreme Court, Third Department.

Dated May 3rd, 1923.

Richard H. Curran, Member of State Industrial Board.

---

BEFORE STATE INDUSTRIAL BOARD

CERTIFICATION OF RECORD

I, Sara McPike, Secretary of the State Department of Labor, do hereby certify that I have compared the foregoing papers (excepting the statement under Rule 234) with the respective originals thereof, in the office of the State Department of Labor, and that the same are true and correct copies of said originals and of the whole thereof, and that said papers constitute all of the papers and proceedings herein, including the evidence which was taken before the said State Department of Labor in relation to the foregoing claim.

In witness whereof, I have hereunto set my hand and the official seal of the State Department of Labor on the 3rd day of May, 1923.

Dated New York, N. Y., May 3rd, 1923.

Sara McPike, Secretary State Department of Labor.

---

[fol. 11] IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION

[Title omitted]

ORDER OF AFFIRMANCE

The above named R. E. Sheehan Co. and the Ætna Life Insurance Company having appealed from an award of the State Industrial Board entered in the office of the State Industrial Commissioner on the 14th day of March, 1923, whereby an award was made to the [fol. 12] State Treasurer for $500 in accordance with subdivision 8 of section 15, and $500 in accordance with subdivision 9 of section 15 of the Workmen's Compensation Law, and said appeal having come on to be heard in this court and having been argued by William H. Foster, Esq., for the appellants, and E. C. Aiken, Deputy Attorney General, for the State Industrial Board, and due deliberation having been had thereon;

Now on motion of Carl Sherman, Attorney General, Attorney for the State Industrial Board, it is

Ordered, that the award of the State Industrial Board appealed from be and the same hereby is unanimously affirmed without costs.

Joseph H. Hollands, Esq., Clerk.

A copy. Joseph H. Hollands, Esq., Clerk. (L. S.)

---

[fol. 13] COURT OF APPEALS, STATE OF NEW YORK

Before the State Industrial Board, Respondent

[Title omitted]

NOTICE OF APPEAL TO COURT OF APPEALS

SIRS: Please take notice that R. E. Sheehan Company, Employer, and Ætna Life Insurance Company, Insurance Carrier, hereby appeal to the Court of Appeals from the judgment and order of affirmance of the Supreme Court, Appellate Division, Third Department, entered in the office of the clerk of the Appellate Division on the 8th day of May, 1923, and from each and every part of said award.

Dated, Syracuse, N. Y., May 9, 1923.

Yours, etc., William H. Foster, Attorney for Appellants, Office & P. O. Address 403 Union Building, Syracuse, N. Y.

[fol. 14] To R. M. Barber, Esq., Clerk Court of Appeals, Albany, N. Y.; Joseph H. Hollands, Esq., Clerk App. Div., Third Dept., Albany, N. Y.; Hon. Carl Sherman, Atty. Genl., Capitol, Albany, N. Y.; Mrs. Charles Greiner, Claimant, 529 Delaware Street, Syracuse, N. Y.; Hon. Bernard L. Shientag, Industrial Commr., 124 E. 28th Street, New York City.

---

COURT OF APPEALS, STATE OF NEW YORK

Before the State Industrial Board, Respondent

[Title omitted]

AFFIDAVIT OF NO OPINION

STATE OF NEW YORK,
County of Onondaga,
City of Syracuse, ss:

Myron R. Brewster, being duly sworn, deposes and says: that he is managing clerk in the office of the attorney for the appellants in [fol. 15] the above entitled action and is familiar with this file, that

no opinion was rendered by the Appellate Division in affirming the award for compensation herein.

Myron R. Brewster.

Subscribed and sworn to before me this 9th day of April, 1923. Elizabeth McAuliffe, Comm'r of Deeds.

---

COURT OF APPEALS, STATE OF NEW YORK

Before the State Industrial Board, Respondent

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD

It is hereby stipulated by and between the attorneys for the respective parties hereto that the foregoing record contains all of the papers and proceedings including the evidence which were before the State Industrial Board in relation to the foregoing claim and that [fol. 16] the same are true and correct copies of the originals and the whole thereof.

It is further stipulated that the foregoing case which contains all the evidence introduced at the hearings of this claim be and the same hereby is settled as a case herein and it is further stipulated that the foregoing printed record be filed in the office of clerk of the Court of Appeals, State of New York, as the case on appeal herein.

It is further stipulated that certification by the Secretary of the Department of Labor be waived.

Carl Sherman, Atty. Genl., Attorney for the State Industrial Board. William H. Foster, Attorney for Appellants.

---

[fol. 17] SUPREME COURT, APPELLATE DIVISION, THIRD JUDICIAL DEPARTMENT

[Title omitted]

CLERK'S CERTIFICATE

STATE OF NEW YORK,
Third Judicial Department, ss:

I, Joseph H. Hollands, Clerk of said Court, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of the claim of the State Treasurer, arising out of the death of Edward Burke, deceased, claimant-respondent, against R. E. Sheehan Company, Employer, and Aetna Life Insurance Company, Insurance Carrier, Appellants, as same now appear on file in my office.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court at my office in the City of Albany, State of New York, this 2d day of October, 1923.

Joseph H. Hollands, Clerk of the Appellate Division, Supreme Court, Third Department. [Seal of Supreme Court Appellate Division, Third Department.]

---

[fol. 18] SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR WRIT OF ERROR

To the Supreme Court of the United States and to the Honorable Justices thereof:

The petition of R. E. Sheehan Company and Aetna Life Insurance Company respectfully shows:

First. On or about the 6th day of February, 1923 one Mrs. Charles Greiner, administratrix of the estate of Edward Burke, deceased, commenced before the State Industrial Board of the State of New York, a special proceeding against your petitioners under Chapter 615 of the Laws of 1922 of the State of New York, commonly known as the Workmen's Compensation Law, and therein alleged that said Edward Burke on February 3, 1923 while employed as a coal driver by R. E. Sheehan Company and while engaged in the regular course of his employment driving a load of coal, the wagon upon which he was sitting and which he was driving, turned over at the Corner of Milton and Humphries Streets in the City of Syracuse, N. Y. whereupon said Edward Burke was thrown to the ground, sustaining injuries in the nature of an intestinal hernia which caused his death on February 4, 1923.

Second. In said proceeding before said Commissioner your petitioners appeared and thereupon such proceedings were had and taken that, pursuant to said Workmen's Compensation Law an award of $100.00 for the funeral expenses of said deceased was made and, it appearing that said deceased left him surviving no persons dependent upon him, your petitioners were directed to pay to the State Treasurer [fol. 19] of the State of New York the sum of $500.00 pursuant to Subdivision 8 of Section 15 of the Workmen's Compensation Law and also the sum of $500, pursuant to the provisions of Subdivision 9 of Section 15 of the Workmen's Compensation Law which subdivisions read as follows:

Section 15, Subdivision 8. "Permanent total disability after permanent partial disability. If an employee who has previously incurred permanent partial disability through the loss of one hand, one arm, one foot, one leg, or one eye, incurs permanent total disability through the loss of another member or organ, he shall be paid, in

addition to the compensation for permanent partial disability provided in this section and after the cessation of the payments for the prescribed period of weeks special additional compensation for the remainder of his life to the amount of sixty-six and two-thirds per centum of the average weekly wage earned by him at the time the total permanent disability was incurred. Such additional compensation shall be paid out of a special fund created for such purpose in the following manner: The insurance carrier shall pay to the state treasurer for every case of injury causing death in which there are no persons entitled to compesation the sum of five hundred dollars. The state treasurer shall be the custodian of this special fund, and the commissioner shall direct the distribution thereof."

Section 15, Subdivision 9. "Maintenance for employees undergoing vocational rehabilitation. An employee, who as a result of injury is or may be expected to be totally or partially incapacitated for a remunerative occupation and who, under the direction of the state board of vocational education is being rendered fit to engage in a remunerative occupation, shall receive additional compensation necessary for his maintenance; but such additional compensation shall not exceed ten dollars a week. The expense shall be paid out of a special fund created in the following manner: The insurance carrier shall pay to the state treasurer for every case of injury causing death, in which there are no persons entitled to compensation, the sum of five hundred dollars. The state treasurer shall be the custodian of this special fund and the industrial commissioner shall direct the distribution thereof."

Third. In said proceeding before said State Industrial Board your petitioners objected to the rendition of said awards of $500, under Subdivisions 8 and 9 of Section 15 of the Workmen's Compensation Law upon the following grounds:

(a) That such award would be so unfair and unreasonable in amount that to compel payment thereof would deprive your petitioners of their property without due process of law in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the [fol. 20] United States.

(b) That such award would be in the nature of a tax, imposed only on the happening of a contingency, and would be of such unequal application that to compel payment thereof would deny to your petitioners the equal protection of the laws, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Fourth. A written decision and award made by the State Industrial Board was entered on the 3rd day of May, 1923 wherein and whereby the said objections of your petitioners were overruled and the said sum of $500.00 under Subdivision 8 of Section 15 and the said sum of $500.00 under Subdivision 9 of Section 15 was directed to be paid to the State Treasurer of the State of New York.

Fifth. From said decision and award of said State Industrial Board your petitioners duly appealed to the Appellate Division of

the Supreme Court, in and for the Third Judicial Department of the State of New York where upon the argument of said appeal which duly came on to be heard, your petitioners through their duly authorized attorney duly urged against the validity of said awards, the contentions hereinbefore specified in paragraph Third of this petition but said Appellate Division of the Supreme Court overruled said contentions and by an order bearing the date of May 8, 1923 and entered in the office of the Clerk of said Appellate Division on the 8th day of May, 1923 said Appellate Division duly affirmed said decision and award of the State Industrial Board so entered.

Sixth. From said order of said Appellate Division your petitioners duly appealed to the Court of Appeals of the State of New York, which was and is the highest court of said State in which could be had a decision of the questions so raised by said contentions of your petitioners hereinbefore specified in paragraph third of this petition and which contentions your petitioners through their counsel duly urged upon the argument of said appeal to the Court of Appeals of the State of New York. But said Court of Appeals overruled said contentions [illegible] of this petition and by its judgment rendered on the 12th day of June, 1923, said Court of Appeals affirmed said order of said Appellate Division of the Supreme Court, to which said Court of Appeals sent down its remittitur, consisting of a copy of the said judgment of the said Court of Appeals and of the papers upon which said Court of Appeals made its said judgment, and said remittitur was filed on the 15th day of June, 1923 in the office of the Clerk of said Appellate Division where said remittitur now remains of record.

Seventh: In said judgment of the Court of Appeals there was drawn in question the validity of a statute of the State of New York to wit said Subdivision 8 of Section 15 of the said Workmen's Compensation Law and said Subdivision 9 of Section 15 of said Law upon the ground of the repugnancy of said statute to the due process and to the equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, but the decision was in favor of the validity of said statute.

Eighth. The above named N. Monroe Marshall at the time when said award was directed to be paid was State Treasurer of the State of New York and has since been substituted by George K. Shuler by order of the Appellate Division Sept. 11, 1923. By virtue of the provisions of said Workmen's Compensation Law said State Industrial Board which was then composed of John D. Higgins, Richard H. Curran and Rosalie L. Whitney appeared by the Attorney General of the State of New York both in said Appellate Division and in said Court of Appeals in support of the validity of said statute thus brought up for review by said appeals. Said State Industrial Board now consists of John D. Higgins, Richard H. Curran and Frances Perkins.

Wherefore, your petitioners pray that a writ of error may be allowed and issued, directed to the Appellate Division of the Supreme Court in and for the Third Judicial Department of the State of

[fol. 22] New York, commanding said Appellate Division to send to the Supreme Court of the United States the record of all and singular the record and papers in said special proceeding and for citation and supersedeas to stay execution to the end that the errors of which your petitioners complain herein and in the assignment of errors herein filed may be reviewed and, if errors be found, corrected conformably to the Constitution and Laws of the United States.

And your petitioners will ever pray.

Dated: September 12th, 1923.

R. E. Sheehan Company and Aetna Life Insurance Co., By William H. Foster, Their Counsel.

[fol. 23] Jurat showing the foregoing was duly sworn to by Wm. H. Foster omitted in printing.

[fol. 24] [File endorsement omitted.]

---

[fol. 25] SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRAYER FOR REVERSAL

To the Supreme Court of the United States:

Comes now R. E. Sheehan Company and Aetna Life Insurance Company, plaintiffs-in-error and pray for a reversal of the order of the Supreme Court of the State of New York herein entered in the office of the Clerk of the Appellate Division thereof, in the Third Judicial Department of said State on the 14th day of March, 1923 affirming a decision and award of the State Industrial Board of the said State, a reversal of which is likewise prayed, entered on the 3rd day of May, 1923; and plaintiffs-in-error further pray for a reversal of a judgment of the Court of Appeals of said State, rendered on the 13th day of June, 1923 affirming said order hereinbefore first mentioned.

And your petitioner will ever pray.

Dated: September 12th, 1923.

William H. Foster, Counsel for Plaintiffs-in-error.

September 12, 1923.

Application for writ of error presented this day.

Frank H. Hiscock, Chief Judge of Court of Appeals of State of New York.

[fol. 26] [File endorsement omitted.]

[fol. 27] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS

To the Supreme Court of the United States:

Comes now R. E. Sheehan Company and Aetna Life Insurance Company, plaintiffs-in-error, and make and file this their assignment of errors:

The Court of Appeals of the State of New York, in its judgment rendered on the 13th day of June, 1923, erred as did also the Appellate Division of the Supreme Court in and for the Third Judicial Department of said State in overruling the contentions of your petitioner:

1. That the award of $500.00 made herein to the State Treasurer pursuant to Subdivision 8 of Section 15 of the Workmen's Compensation Law of the State of New York and the award of $500.00 made herein to the State Treasurer pursuant to Subdivision 9 of Section 15 of said law are so unfair and unreasonable in amount that to compel payment thereof will deprive your petitioner of its property without due process of law in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

2. That each of said awards is in the nature of a tax, imposed on the happening of a contingency, and is of such unequal application that to compel payment thereof will deny to your petitioner the equal protection of the laws in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Dated: September 12th, 1923.

William H. Foster, Counsel for Plaintiffs-in-error.

[fol. 28] [File endorsement omitted.]

---

[fol. 29] Citation omitted in printing.

[fol. 30] [File endorsement omitted.]

---

[fol. 31] WRIT OF ERROR

UNITED STATES OF AMERICA ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of New York, Appellate Division, Third Judicial Department, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court, before

you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between R. E. Sheehan Company, employer, and Aetna Life Insurance Company, Insurance Carrier, plaintiffs-in-error, and George K. Shuler, as State Treasurer of the State of New York, John D. Higgins, Richard H. Curran and Frances Perkins, as and Constituting the State Industrial Board of the State of New York, defendants-in-error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity; a manifest error hath happened to the great damage of the said plaintiff in error, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days of the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to cor-
[fol. 32] rect that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the 1st day of October in the year of our Lord one thousand nine hundred and twenty-three.

Chas. W. Higgison, Clerk of the District Court of the United States for the Northern District of New York. Dated Sept. 12, 1923. (Seal United States Distr. Ct. Court, N. Dist. of New York.)

Allowed by Frank H. Hiscock, Chief Judge of the Court of Appeals, State of New York.

[fol. 33] [File endorsement omitted.]

[fol. 34] STATE OF NEW YORK,
Third Judicial Department, ss:

SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT

Before the State Industrial Board, Respondent

[Title omitted]

CLERK'S CERTIFICATE

In Obedience to the commands of the writ of error herein allowed September 12, 1923, I herewith transmit to the Supreme Court of the United States a duly certified transcript of all and singular the record and proceedings in the above entitled cause, together with said writ of error.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Albany, State of New York, this 2d day of October, 1923.

Joseph H. Hollands, Clerk of the Appellate Division of the Supreme Court in and for the Third Judicial Department of the State of New York. [Seal of the Supreme Court, Appellate Division, Third Department.]

---

[fol. 35] STATE OF NEW YORK,
Third Judicial Department, ss:

SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT

Before the State Industrial Board, Respondent

[Title omitted]

CERTIFICATE OF LODGMENT

I, Joseph H. Hollands, Clerk of the Appellate Division of the Supreme Court, in and for the Third Judicial Department of the State of New York, do hereby certify that there have been lodged with me, as such Clerk, this day, in the above entitled cause:

1. The original bond, of which a copy is hereto annexed.

2. Two copies of the writ of error as herein set forth, one for the defendant in error above and one to file in my office.

3. One copy of the prayer for reversal, petition and assignment of errors herein.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the City of Albany, State of New York this 2d day of October, 1923.

Joseph H. Hollands, Clerk of the Appellate Division of the Supreme Court in and for the Third Judicial Department of the State of New York. [Seal of the Supreme Court, Appellate Division, Third Department.]

---

[fols. 36 & 37] Bond on writ of error for $500.00 approved Sept. 12, 1923; omitted in printing.

---

[fols. 38-40] Certificate of authority of resident vice-presidents, resident assistant secretaries, and attorneys-in-fact omitted in printing.

[fols. 41 & 42] [File endorsements omitted.]

Endorsed on cover: File No. 29,903. New York Supreme Court. Term No. 593. R. E. Sheehan Company and Ætna Life Insurance Company, plaintiffs in error, vs. George K. Shuler, as State Treasurer of the State of New York; John D. Higgins, Richard H. Curran, and Francis Perkins, as and constituting the State Industrial Board of the State of New York. Filed October 8th, 1923. File No. 29,903.

(1313)

# BRIEF OF PLAINTIFFS-IN-ERROR

## SUPREME COURT OF THE UNITED STATES

### OCTOBER TERM, 1923

### No. 593

R. E. SHEEHAN COMPANY AND AETNA LIFE INSURANCE COMPANY,

PLAINTIFFS-IN-ERROR,

*vs.*

GEORGE K. SHULER, as State Treasurer of the State of New York; JOHN D. HIGGINS, RICHARD H. CURRAN, AND FRANCIS PERKINS, as and Constituting the State Industrial Board of the State of New York,

DEFENDANTS-IN-ERROR.

**In Error to the Supreme Court, Appellate Division, Third Judicial Department of the State of New York.**

WILLIAM H. FOSTER, Syracuse, N. Y.,

*Counsel for Plaintiffs-in-Error.*

# BRIEF FOR PLAINTIFFS-IN-ERROR

# SUPREME COURT

# OF THE UNITED STATES

---

## OCTOBER TERM, 1923

**No. 593**

---

R. E. SHEEHAN COMPANY and AETNA LIFE INSURANCE COMPANY,

Plaintiffs-in-Error,

*vs.*

GEORGE K. SHULER, as State Treasurer of the State of New York; JOHN D. HIGGINS, RICHARD H. CURRAN, and FRANCIS PERKINS, as and Constituting the State Industrial Board of the State of New York,

Defendants-in-Error.

---

In error to the Supreme Court, Appellate Division, Third Judicial Department, of the State of New York.

---

## Statement of the Case.

This case involves (Transcript, p. 14) the constitutionality, under the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, of Chapter 615 of the Laws of 1922 of the State of New York, which added to section 15 of the New York Workmen's Compensation Law, subdivision 8 and subdivision 9 thereof, reading as follows:

"8. Permanent total disability after permanent partial disability. If an employee who has previously incurred permanent partial disability through the loss of one hand, one arm, one foot, one leg, or one eye, incurs permanent total disability through the loss of another member or organ, he shall be paid in addition to the compensation for permanent partial disability provided in this section and after the cessation of the payments for the prescribed period of weeks special additional compensation for the remainder of his life to the amount of sixty-six and two-thirds per centum of the average weekly wage earned by him at the time the total permanent disability was incurred. Such additional compensation shall be paid out of a special fund created for such purposes in the following manner: The insurance carrier shall pay to the state treasurer for every case of injury causing death in which there are no persons entitled to compensation the sum of five hundred dollars. The state treasurer shall be the custodian of this special fund, and the commissioner shall direct the distribution thereof."

"9. Maintenance for employees undergoing vocational rehabilitation. An employee, who as a result of injury is or may be expected to be totally or partially incapacitated for a remunerative occupation and who, under the direction of the state board of vocational education is being rendered fit to engage in a remunerative occupation, shall receive additional compensation necessary for his maintenance; but such additional compensation shall not exceed ten dollars a week. The expense shall be paid out of a special fund created in the following manner: The insurance carrier shall pay to the state treasurer for every case of injury causing death, in which there are no persons entitled to compensation, the sum of five hundred dollars. The state treasurer shall be the custodian of this special fund and the industrial commissioner shall direct the distribution thereof."

So much of the New York Workmen's Compensation Law thus amended as is deemed necessary to the decision of this cause, is printed in brief No. 103, October Term, 1923, of this court in the case entitled "*New York State Railways, Plaintiff-in-Error, vs. George K. Shuler as Treasurer of the State of New York, et al., Defendants-in-Error*," and marked in such brief Appendices "A", "B", "C", and which is referred to and made part of this brief, which was the law at the time writ of error was granted in that case on June 5, 1922. This law was again amended July 1, 1922, Chapter 615 being Chapter 67 of the Consolidated Laws, and such part of said law so amended as is deemed necessary to the decision of this cause is annexed hereto and marked Appendix "D".

This proceeding was commenced by the administratrix of the Estate of Edward Burke, deceased, before the State Industrial Board of the State of New York, under Chapter 615 of the Laws of 1922 of the State of New York, commonly known as the Workmen's Compensation Law, wherein it is alleged that said Edward Burke on February 3, 1923, while employed as a coal driver by R. E. Sheehan Company while engaged in the regular course of his employment driving a load of coal, the wagon upon which he was sitting and which he was driving, turned over at the corner of Milton and Humphrey Streets in the City of Syracuse, N. Y., whereupon said Edward Burke was thrown to the ground, sustaining injuries in the nature of an intestinal hernia which caused his death on February 4, 1923.

In said proceeding the Industrial Board found as a fact that decedent left him surviving no one entitled to compensation under the Workmen's Compensation Law (Transcript, p. 5) but overruling the objections of plaintiffs-in-error predicated upon the due process and equal protection clauses of the Fourteenth Amendment (Transcript, p. 4), awarded to

the State Treasurer the sum of five hundred dollars pursuant to subdivision 8 of Section 15, and five hundred dollars pursuant to provisions of subdivision 9 of Section 15 of the Workmen's Compensation Law, which award was directed to be paid by the plaintiffs-in-error.

The Appellate Division of the Supreme Court in the Third Judicial Department unanimously affirmed the award of the State Industrial Board (Transcript, p. 7). On further appeal taken to the Court of Appeals, the Appellate Division's order of affirmance was in turn affirmed (Transcript, p. 9). The Court of Appeals sent down its remittitur to the Appellate Division (Transcript, p. 1).

In neither of the Appellate Courts was any opinion written, but the Appellate Division had previously sustained, with an opinion, the validity of the statute in question in *Watkinson vs. Hotel Pennsylvania* (195 A. D. 624), a decision which the Court of Appeals affirmed without opinion. (221 N. Y. 562.)

## Specification of Errors.

Plaintiffs-in-error contend that the Court of Appeals, as also the Appellate Division and the State Industrial Board, erred in not holding:

(1) That the award of five hundred dollars ($500.00) made herein to the State Treasurer, pursuant to subdivision 8 of section 15 of the Workmen's Compensation Law of the State of New York and the award of five hundred dollars ($500.00) made herein to the State Treasurer pursuant to subdivision 9 of section 15 of said law are so unfair and unreasonable in amount that to compel payment thereof will deprive plaintiffs-in-error of their property without due process of law in contravention of section 1 of the Fourteenth Amendment to the Constitution of the United States;

(2) That each of said awards is in the nature of a tax imposed on the happening of a contingency,

and is of such unequal application that to compel payment thereof will deny to plaintiffs-in-error the equal protection of the laws, in contravention of section 1 of the Fourteenth Amendment to the Constitution of the United States.

## Argument.

STATEMENT OF FACTS.

On February 3, 1923, Edward Burke was employed as a coal driver by R. E. Sheehan Company with an office and principal place of business at 143 South West Street, Syracuse, N. Y., which employer was engaged in the coal business and operating in connection therewith certain automobile trucks, said Edward Burke, while engaged in the regular course of his employment and while driving a load of coal for his employer to No. 543 Bryant Avenue, Syracuse, N. Y., the wagon upon which he was sitting turned over, throwing said Burke to the ground, causing injuries which resulted in his death on February 4, 1923. (Transcript, p. 5.)

The points of argument and the further facts in this case are the same as the points involved in case No. 103 of October Term, 1923, entitled "*New York State Railways, Plaintiff-in-Error, vs. George K. Shuler, et al., Defendants-in-Error,*" and the points of the brief in said case above mentioned are hereby referred to and made the points of argument in this cause.

All of which is respectfully submitted

Dated, January 7, 1924.

WILLIAM H. FOSTER,

Of Counsel for Plaintiffs-in-Error.

## Appendix "D."

The Workmen's Compensation Law, chapter 67 of the Consolidated Laws, became a law July 1, 1922.

### ARTICLE I.

#### SECTION 15.

"8. Permanent total disability after permanent partial disability. If an employee who has previously incurred permanent partial disability through the loss of one hand, one arm, one foot, one leg, or one eye, incurs permanent total disability through the loss of another member or organ, he shall be paid, in addition to the compensation for permanent partial disability provided in this section and after the cessation of the payments for the prescribed period of weeks special additional compensation for the remainder of his life to the amount of sixty-six and two-thirds per centum of the average weekly wage earned by him at the time the total permanent disability was incurred. Such additional compensation shall be paid out of a special fund created for such purpose in the following manner: The insurance carrier shall pay to the state treasurer for every case of injury causing death in which there are no persons entitled to compensation the sum of five hundred dollars. The state treasurer shall be the custodian of this special fund, and the commissioner shall direct the distribution thereof."

"9. Maintenance for employees undergoing vocational rehabilitation. An employee, who as a result of injury is or may be expected to be totally or partially incapatitated for a remunerative occupation and who under the direction of the state board of vocational education is being rendered fit to engage in a remunerative occupation, shall receive additional compensation necessary for his maintenance; but such additional compensation shall not exceed

ten dollars a week. The expense shall be paid out of a special fund created in the following manner: The insurance carrier shall pay to the state treasurer for every case of injury causing death, in which there are no persons entitled to compensation, the sum of five hundred dollars. The state treasurer shall be the custodian of this special fund and the industrial commissioner shall direct the distribution thereof."

As amended by Chapter 615, Laws of 1922.

# Supreme Court of the United States

**October Term, 1923.**

No. 593.

R. E. SHEEHAN COMPANY, Employer, and AETNA LIFE INSURANCE COMPANY, Insurance Carrier,
*Plaintiffs-in-Error,*

against

GEORGE K. SHULER, as Treasurer of the State of New York, JOHN D. HIGGINS, RICHARD H. CURRAN and FRANCES PERKINS, State Industrial Board,
*Defendants-in-Error.*

## BRIEF FOR DEFENDANTS-IN-ERROR.

CARL SHERMAN,
*Attorney General of the State of New York,*
Capitol, Albany, New York.

E. CLARENCE AIKEN,
*Deputy Attorney General, of Counsel for the State Industrial Board,*
Capitol, Albany, New York.

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

# Supreme Court of the United States

**October Term, 1923.**

No. 593.

---

R. E. SHEEHAN COMPANY, Employer, and AETNA LIFE INSURANCE COMPANY, Insurance Carrier,

*Plaintiffs-in-Error,*

against

GEORGE K. SHULER, as Treasurer of the State of New York, JOHN D. HIGGINS, RICHARD H. CURRAN and FRANCES PERKINS, State Industrial Board,

*Defendants-in-Error.*

---

**IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, THIRD JUDICIAL DEPARTMENT.**

## Statement of the Case.

This is a writ of error to review an order of the Court of Appeals of the State of New York, which unanimously affirmed an order of the Ap-

pellate Division, Third Department, which in turn unanimously affirmed the award of the State Industrial Board requiring payment to the State Treasurer in the sum of $500 in respect to the death of Edward Burke, pursuant to subdivision 8 of Section 15 of the Workmen's Compensation Law, and the further award against said R. E. Sheehan, Employer, and Aetna Life Insurance Company, Insurance Carrier, to the State Treasurer in the sum of $500 in respect to the death of Edward Burke, pursuant to the provisions of subdivision 9 of Section 15 of the Workmen's Compensation Law. All the facts in the case were stipulated and the conclusions of fact and award signed by the State Industrial Board were made pursuant thereto.

The sole question raised is as to the constitutionality of subdivisions 8 and 9 of Section 15 of the New York Workmen's Compensation Law, which provide for the payment of two sums of $500 in the case of death of employees where there are no dependents.

## History.

The first Workmen's Compensation Law was enacted in Germany in 1884. This was followed by other European countries, namely: Austria, 1887; Norway, 1894; Finland, 1895; Great Britain, 1897; Denmark, Italy and France, 1898; Spain, 1900; Netherlands, Greece and Sweden, 1901;

Luxembourg, 1902; Russia and Belgium, 1903, and Hungary in 1907. The passage of workmen's compensation laws in this country commenced about the year 1910. In that year the Legislature of the State of New York passed a workmen's compensation law with reference to certain dangerous or hazardous employments. This was declared unconstitutional by the Court of Appeals of said state in the case of *Ives v. South Buffalo R. R. Co.*, 201 N. Y., 271. Thereupon an amendment to the State Constitution was passed by two successive sessions of the Legislature and submitted to the people of the state, which added Section 19 to Article I of the State Constitution. The people voted on this on November 4, 1913, adopting it by a vote of 510,914 against 194,494, and pursuant thereto the Workmen's Compensation Law was passed, known as Chapter 816 of the Laws of 1913 and re-enacted and amended by Chapter 41 of the laws of 1914. The law took effect on the first day of July, 1914, and has since been several times amended. Since 1910 forty-two states have adopted workmen's compensation laws.

The result of the passage of these laws has been to reduce legal expense and to greatly reduce litigation. It has also greatly extended the use of safety devices and the installation of methods of examination and treatment of employees in large plants. Manufacturers of safety devices who could not sell their wares before 1910 have done

a thriving business since and the number of accidents has been reduced beyond the wildest dreams of the original authors of compensation laws.

The New York law provides that an employer shall secure compensation to his employees (1) by insuring payment of such compensation with the State Fund, (2) by insuring payment of such compensation with a stock corporation or mutual association, or (3) by furnishing satisfactory proof of financial ability to pay compensation, in which case the employer may be allowed by the Industrial Board to become a self-insurer. Claims are tried or heard by referees, whose awards may be supervised, amended or rescinded by the State Industrial Board. An appeal may be taken from such awards to the Appellate Division of the Supreme Court, Third Judicial Department, and if the decision is not unanimous, or if permission be granted, or if a constitutional question is involved, appeals may be taken to the Court of Appeals. Section 23 provides that the Industrial Board shall be deemed a party to every such appeal and the Attorney General shall represent the Board thereon. Under this provision the Attorney General represents the Board upon the writ of error to be argued in this Court.

The history of the origin of the two provisions now contained in the law, and which were not in it when it was originally passed, is as follows: The first provision for payment to the State

Treasurer, subdivision 8 of Section 15 (formerly subd. 7), now reads as follows:

> "8. Permanent total disability after permanent partial disability. If an employee who has previously incurred permanent partial disability through the loss of one hand, one arm, one foot, one leg, or one eye, incurs permanent disability through the loss of another member or organ, he shall be paid, in addition to the compensation for permanent partial disability provided in this section and after the cessation of the payments for the prescribed period of weeks special additional compensation for the remainder of his life to the amount of sixty-six and two-thirds per centum of the average weekly wage earned by him at the time the total permanent disability was incurred. Such additional compensation shall be paid out of a special fund created for such purpose in the following manner: The insurance carrier shall pay to the state treasurer for every case of injury causing death in which there are no persons entitled to compensation the sum of five hundred dollars. The state treasurer shall be the custodian of this special fund, and the commissioner shall direct the distribution thereof."

The origin of the provision is as follows, namely:

In the case of *Schwab v. Emporium Forestry Co.*, 167 App. Div., 614, a case arose where the claimant was injured on July 6, 1914, by having his right hand severed at the wrist. His left hand had been amputated in the year 1892. The question was certified to the Appellate Division as to whether the claimant was entitled to compensa-

tion for total permanent disability under subdivision 1 of Section 15 of the Workmen's Compensation Law, which provided that the loss of two hands should constitute total permanent disability, or whether he was only entitled to the loss of one hand under subdivision 3 of Section 15. The Appellate Division, upon the certified question, answered that he was entitled to compensation for total permanent disability and this was affirmed by the Court of Appeals, 216 N. Y., 712, and the Legislature thereupon added to subdivision 6 of Section 15 a proviso "that an employee who is suffering from a previous disability shall not receive compensation for a later injury in excess of the compensation allowed for such injury when considered by itself and not in connection with the previous disability." This amendment, no doubt, was passed because the law as declared by the courts might have made it difficult for crippled persons to obtain or retain employment.

At the next session of the Legislature, however, it added subdivision 7 to Section 15 (Chap, 622, L. 1916), providing for the payment of $100 to the State Treasurer to constitute a fund from which to compensate persons who have been permanently disabled as now provided in the subdivision above quoted. This provision was challenged as unconstitutional and decided by the Court of Appeals in two cases: *State Industrial Commission v. Newman,* 222 N. Y., 363; *State Industrial Commission v. Edsall,* 222 N. Y., 651, and

the provision was upheld. The amount was changed from $100 to $500 by Chapter 615 of the laws of 1922 as will be explained later.

## REHABILITATION AMENDMENT.

Subdivision 9 of Section 15 of the Workmen's Compensation Law, as of July 1, 1922, reads as follows:

> "Maintenance for employees undergoing vocational rehabilitation. An employee, who as a result of injury as or may be expected to be totally or partially incapacitated for a remunerative occupation and who, under the direction of the state board of vocational education is being rendered fit to engage in a remunerative occupation, shall receive additional compensation necessary for his maintenance; but such additional compensation shall not exceed ten dollars a week. The expense shall be paid out of a special fund created in the following manner: The insurance carrier shall pay to the state treasurer for every case of injury causing death, in which there are no persons entitled to compensation, the sum of five hundred dollars. The state treasurer shall be the custodian of this special fund and the industrial commissioner shall direct the distribution thereof."

On June 2, 1920, Congress passed an act to provide for the vocational rehabilitation of persons disabled in industry. This law appropriated $750,000 for the fiscal year ending June 30, 1921, and also for the fiscal year ending June 30, 1922, and for the period of two years thereafter the sum of $1,000,000 each year, provided that the

money appropriated should be upon condition that for every dollar of money expended there should be expended by the State, under the control of the State Board, at least an equal amount for the same purpose.

The State of New York, by chapter 760 of the laws of 1920, amended the Workmen's Compensation Law by adding the subdivision above quoted except that the amount to be paid to the State Treasurer at that time was $900 instead of $500. This chapter 760, besides making this amendment, added Article 47 to the State Education Law and provided for a State Advisory Commission, and various provisions were included in that article for the rehabilitation of physically handicapped persons including those who were accidentally injured under the Workmen's Compensation Law. The amendment above quoted provides for the maintenance of employees who have undergone an injury under the Workmen's Compensation Law. Under this chapter 760 of the State of New York accepted (§1210) the provisions of the United States statute and appropriated $75,000 to the Department of Education for the purposes of the act.

This amendment to the Workmen's Compensation was challenged by the Travelers Insurance Company in the case of *Watkinson v. Hotel Pennsylvania,* 195 App. Div. 624, as unconstitutional. It was, however, affirmed by the Appellate Divi-

sion and also by the Court of Appeals, 231 N. Y. 562, in the latter court without an opinion but with an opinion in the Appellate Division.

On a revision of the Workmen's Compensation Law in 1922, it was found on investigation by Legislative Committee that the $100 which had been paid to the State Treasurer for the cases of permanent total disability was insufficient to provide for such cases. Therefore, in the amendment to the law the $100 and $900 provisions were changed to $500 and $500 for each purpose, making the total amount to be paid to the State Treasurer the same but dividing the individual amounts.

A writ of error was sued out in this court prior to July 1, 1922, in the case of *New York State Railways, Plaintiff in Error v. N. Monroe Marshall, as Treasurer of the State of New York* and objection was made only as to the $900 payment, which case is now pending and argued and submitted herewith.

The questions here involved may be applicable to other states as well as the State of New York, especially upon the question of the rehabilitation law. A rehabilitation law was passed by the State of New Jersey soon after the end of the war, since which time thirty-four states have passed laws requiring that those injured in industries shall be given the latest and best care in this field. "By rehabilitation is meant not

only the latest methods of orthopedic surgery and surgical reconstruction of the injured, but also training of the injured member to perform the utmost function of which it is capable; the teaching of the patient skill in work other than that which he had been doing in case the injury has incapacitated him for his previous occupation; the application of the latest psychological methods to improve his morale, and finally a study of industry for the purpose of ascertaining those occupations which are suited to the cripple and fitting the patient to make himself useful in such work when the position has been found for him. It includes also such subjects as mechanical devices and artificial limbs, the relation of the cripple to compensation laws, the prevention of accidents through safety devices, and many other subjects which bear on the relation of the cripple to society."

It will be noted, however, that subdivision 9 in question does not provide that the money which is turned over to the State in the case of no dependents shall be used for vocational training or education which is provided by the State and by Congress but provides that the party who has received an injury by which he is totally or partially incapacitated shall receive additional compensation for his maintenance while being rehabilitated, but such additional compensation shall not exceed $10 a week. It is, therefore, strictly additional compensation which is paid him as the re-

sult of an injury, but paid him in order that he may be rendered fit to engage in a remunerative occupation.

## Argument.

The constitutionality of the Workmen's Compensation Law of the State of New York was considered by this court in the case of *New York Central R. R. Co. v. White*, 243 U. S. 188. One of the questions there considered was the reasonableness of the said law and it is said:

> "It is plain that, on grounds of natural justice, it is not unreasonable for the State, while relieving the employer from responsibility for damages measured by common law standards and payable in cases where he or those for whose conduct he is answerable are found to be at fault, to require him to contribute a reasonable amount, and according to a reasonable and definite scale, by way of compensation for the loss of earning power incurred in the common enterprise, irrespective of the question of negligence, instead of leaving the entire loss to rest where it may chance to fall—that is, upon the injured employee or his dependents. Nor can it be deemed arbitrary and unreasonable, from the standpoint of the employee's interest, to supplant a system under which he assumed the entire risk of injury in ordinary cases, and in others had a right to recover an amount more or less speculative upon proving facts of negligence that often were difficult to prove and substitute a system under which in all ordinary cases of accidental injury he is sure of a definite and easily ascertained compensation, not being obliged to assume the entire

loss in any case but in all cases assuming any loss beyond the prescribed scale."

The question of reasonableness undoubtedly arises in the present case. The courts would not sustain the payment of a large sum, say $20,000, in the case of the death of an employee who left no dependents. We do contend, however, that the sum of $1,000, $500 of which is devoted to the payment of awards to claimants who are totally disabled and $500 payable to injured employees who are being rehabilitated, is not an unreasonable amount. Where an employee dies leaving a widow and children, the rate of compensation runs from $8 to $20 per week, or from $400 to $1000 per year. The rates of insurance companies, as I am informed, are based by Actuaries upon the number of deaths per year obtained from statistics and the average rate of the amount paid in cases of death, assuming that there are dependents. If the rates of insurance carriers, therefore, are so based, it will be seen that $1,000 is not an unreasonable amount to pay for the death of an employee. It is ordinarily very much less than the amount which the insurance carrier would have to contribute if there were dependents.

I think it may be noted that this question is one which does not involve employers generally but only insurance carriers, and with insurance carriers it is a matter of contract. They may or may not issue a policy of insurance. Section 54

of the Workmen's Compensation Law provides:

> " * * * * the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer for the payment of compensation under the provisions of this chapter."

In other words, where an insurance carrier issues a policy of insurance it does so knowing the law of the workmen's compensation and it becomes a part of its contract under that law to pay $1000 to the State Treasurer in cases of accidents arising under the law where there are no dependents.

That in requiring the payment to the State Treasurer of $1000 which may be devoted to the benefit of employees who are not the particular employees of the parties insured is not a valid objection to the law. The Workmen's Compensation Law of New York is based primarily upon each employer obtaining insurance against accidents or becoming a self-insurer. The laws of some of the states, however, provide for a general fund and employers are assessed according to the hazards of their employment and compelled to pay into this general fund which is then administered by the State.

In reference to the two provisions of the law of New York now in question, it has adopted the method of payment into a State Fund for the

purposes mentioned in the subdivisions above quoted. The question of payment to a general fund has been fully considered by this Court in the case of *Mountain Timber Co. v. Washington*, 143 U. S. 219, and I can do no better than to quote from Mr. Justice Pitney's opinion in that case in which the objections to said law are considered:

> "But the Washington law goes further, in that the enforced contributions of the employer are to be made whether injuries have befallen his own employees or not, so that however prudently one may manage his business, even to the point of immunity to his employees from accidental injury or death, he nevertheless is required to make periodical contributions to a fund for making compensation to the injured employees of his perhaps negligent competitors.
>
> * * * * We are not concerned with any mere question of construction, nor with any distinction between the police and the taxing powers. The question whether a State law deprives a party of rights secured by the Federal Constitution depends not upon how it is characterized, but upon its practical operation and effect. *Henderson v. Mayor of New York*, 92 U. S. 259, 268; *Stockard v. Morgan*, 185 U. S. 27, 36; *Galveston, Harrisburg & San Antonio Ry. Co. v. Texas*, 210 U. S. 217, 227; *Western Union Telegraph Co. v. Kansas*, 216 U. S. 1, 28, 30; *Ludwig v. Western Union Telegraph Co.*, 216 U. S. 146, 162; *St. Louis Southwestern Ry. Co. v. Arkansas*, 235 U. S. 350, 362. And the Federal Constitution does not require a separate exercise by the States of their powers of regulation and of taxation. *Gundling v. Chicago*, 177 U. S. 183, 189.
>
> Whether this legislation be regarded as a

mere exercise of the power of regulation, or as a combination of regulation and taxation, the crucial inquiry under the Fourteenth Amendment is whether it clearly appears to be not a fair and reasonable exertion of governmental power, but so extravagant or arbitrary as to constitute an abuse of power. All reasonable presumptions are in favor of its validity, and the burden of proof and argument is upon those who seek to overthrow it. *Erie R. R. Co. v. Williams*, 233 U. S. 685, 699. In the present case it will be proper to consider: (1) Whether the main object of the legislation is, or reasonably may be deemed to be, of general and public moment, rather than of private and particular interest, so as to furnish a just occasion for such interference with personal liberty and the right of acquiring property as necessarily must result from carrying it into effect. (2) Whether the charges imposed upon employers are reasonable in amount, or, on the other hand, so burdensome as to be manifestly oppressive. And (3) whether the burden is fairly distributed, having regard to the causes that give rise to the need for the legislation.

As to the first point: The authority of the States to enact such laws as reasonably are deemed to be necessary to promote the health, safety, and general welfare of their people, carries with it a wide range of judgment and discretion as to what matters are of sufficiently general importance to be subjected to state regulation and administration. *Lawton v. Steele*, 152 U. S. 133, 136. 'The police power of a State is as broad and plenary as its taxing power.' *Kidd v. Pearson*, 128 U. S. 1, 26.

* * * * * * * * *

It hardly would be questioned that the State might expend public moneys to provide

hospital treatment, artificial limbs, or other like aid to persons injured in industry, and homes or support for the widows and orphans of those killed. Does direct compensation stand on a less secure ground? A familiar exercise of state power is the grant of pensions to disabled soldiers and to the widows and dependents of those killed in war. Such legislation usually is justified as fulfilling a moral obligation or as tending to encourage the performance of the public duty of defense. But is the State powerless to compensate, with pensions or otherwise, those who are disabled, or the dependents of those whose lives are lost, in the industrial occupations that are so necessary to develop the resources and add to the wealth and prosperity of the State? A machine as well as a bullet may produce a wound, and the disabling effect may be the same.

* * * * * * * * *

The idea of special excise taxes for regulation and revenue proportioned to the special injury attributable to the activities taxed is not novel. In *Noble State Bank v. Haskell,* 219 U. S. 104, this court sustained an Oklahoma statute which levied upon every bank existing under the laws of the State an assessment of a percentage of the bank's average deposits, for the purpose of creating a guaranty fund to make good the losses of depositors in insolvent banks. There, as here, the collection and distribution of the fund were made a matter of public administration, and the fund was created not by general taxation but by a special imposition in the nature of an occupation tax upon all banks existing under the laws of the State. In *Hendrick v. Maryland,* 235 U. S. 610, 622, and *Kane v. New Jersey,* 242 U. S. 160, 169, we sustained laws, of a kind now familiar, imposing

license fees upon motor vehicles, graduated according to horse power, so as to secure compensation for the use of improved roadways from a class of users for whose needs they are essential and whose operations over them are peculiarly injurious. And see *Charlotte, Columbia & Augusta R. R. Co. v. Gibbes,* 142 U. S. 386, 394-5, and cases cited. Many of the States have laws protecting the sheep industry by imposing a tax upon dogs in order to create a fund for the remuneration of sheep-owners for losses suffered by the killing of their sheep by dogs. And the tax is imposed upon all dog-owners, without regard to the question whether their particular dogs are responsible for the loss of sheep. Statutes of this character have been sustained by the State Courts against attacks based on constitutional grounds. *Morey v. Brown,* 42 N. H. 373, 375; *Tenney, Chairman v. Lenz,* 16 Wisconsin, 566; *Mitchell v. Williams,* 27 Indiana, 62; *Van Horn v. People,* 46 Michigan, 183, 185, 186; *Longyear v. Buck,* 83 Michigan 236, 240; *Cole v. Hall, Collector,* 103 Illinois 30; *Holst v. Roe,* 39 Ohio St. 340, 344; *McGlone, Sheriff v. Womack,* 129 Kentucky, 274, 283 *et seq.*"

Respectfully submitted,

CARL SHERMAN,
*Attorney General,*
Albany, N. Y.

E. CLARENCE AIKEN,
*Deputy Attorney General,*
*Of Counsel.*

## R. E. SHEEHAN COMPANY ET AL. *v.* SHULER, AS STATE TREASURER OF THE STATE OF NEW YORK, ET AL.

ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

No. 593. Argued January 9, 1924.—Decided May 26, 1924.

Amendments of the New York Workmen's Compensation Law (see *New York Central R. R. Co.* v. *White*, 243 U. S. 188,) provide that, when an injury causes the death of an employee leaving no beneficiaries, the employer or other insurance carrier shall pay the State Treasurer $500 for each of two special funds, one to be used in paying additional compensation to employees incurring permanent total disability after partial disability, the other in vocational education of employees so injured as to need rehabilitation, the use of the special funds for these purposes being additional compensation to employees thus injured over and above that prescribed as the payments to be made by their immediate employers. *Held:*

(1) That the due process clause of the Fourteenth Amendment does not require that this additional compensation be paid by the immediate employers of the employees to be benefited, nor prevent the legislature from providing for its payment out of general funds created as above described. P. 376. *Mountain Timber Co.* v. *Washington*, 243 U. S. 219.

(2) The arrangement does not conflict with the equal protection clause. P. 378.

236 N. Y. 579, affirmed.

ERROR to a judgment affirming two awards under the New York Workmen's Compensation Law, entered in the Supreme Court of New York after affirmances by the Appellate Division and the Court of Appeals and remittitur of the record. See also the case next following, *post*, p. 379.

*Mr. William H. Foster* for plaintiffs in error.

*Mr. E. Clarence Aiken*, Deputy Attorney General, with whom *Mr. Carl Sherman*, Attorney General of the State of New York, was on the brief, for defendants in error.

MR. JUSTICE SANFORD delivered the opinion of the Court.

This case involves the question of the constitutionality of two recent amendments to the Workmen's Compensation Law of New York. Enacted, Laws, 1913, c. 816; reënacted, Laws, 1914, c. 41.

This is a compulsory law establishing in certain employments classed as hazardous an exclusive system governing compensation for injuries to employees resulting in disability or death, irrespective of negligence, and requiring compensation to be paid to injured employees or, in case of death, to designated beneficiaries,[1] according to prescribed scales gauged by the previous wages and the extent of the disabilities or dependency of the beneficiaries. The employer is required to insure the payment of such compensation in a state insurance fund or with an authorized stock association or mutual association, unless, upon proof of his financial ability, he is permitted to become a "self-insurer." The constitutionality of this law was sustained in *New York Central R. R. Co.* v. *White*, 243 U. S. 188.

[1]A widow (or dependent husband), children under eighteen years of age, or other dependent relatives.

The Compensation Law was amended by the Laws of 1922, c. 615 (Consol. Laws, c. 67), so as to include, as subdivisions 8 and 9 of § 15, the two provisions involved in this case, which read:

"8. *Permanent total disability after permanent partial disability.* If an employee who has previously incurred permanent partial disability through the loss of one hand," arm, foot, leg, or eye, "incurs permanent total disability through the loss of another member or organ, he shall be paid, in addition to the compensation for permanent partial disability"[2] and after the cessation thereof, "special additional compensation for the remainder of his life to the amount of sixty-six and two-thirds per centum of the average weekly wage earned by him at the time the total permanent disability was incurred. Such additional compensation shall be paid out of a special fund created for such purpose in the following manner: The insurance carrier[3] shall pay to the state treasurer for every case of injury causing death in which there are no persons entitled to compensation the sum of five hundred dollars. The state treasurer shall be the custodian of this special fund, and the [industrial] commissioner shall direct the distribution thereof.[4]

"9. *Maintenance for employees undergoing vocational rehabilitation.* An employee, who as a result of injury is

[2] Subdivision 7 of § 15 provides that "an employee who is suffering from a previous disability shall not receive compensation for a later injury in excess of the compensation allowed for such injury when considered by itself and not in conjunction with the previous disability." See note 4, *infra*.

[3] That is, the state fund, or corporation or association with which an employer has insured, or an employer permitted to become a "self-insurer." § 2.

[4] This subdivision, which was formerly subdivision 7 of § 15, was incorporated into the Compensation Law by the Laws of 1916, c. 622; the amount of the payment originally prescribed being one hundred dollars. Awards made to the state treasurer under this provision, in its original form, were sustained in *State Indust. Comm.* v. *New-*

or may be expected to be totally or partially incapacitated for a remunerative occupation and who, under the direction of the state board of vocational education is being rendered fit to engage in a remunerative occupation,[5] shall

*man*, 222 N. Y. 363, and *State Indust. Comm.* v. *Edsall*, 222 N. Y. 651 (affirming 179 App. Div. 481).

The history and purpose of this provision is thus stated in *State Indust. Comm.* v. *Newman*, *supra*, p. 366: "In March, 1914, the present Workmen's Compensation Law was finally enacted. . . . It did not then contain the provisions . . . of subdivision 7 of section 15. In November, 1915, we decided that a claimant, who became an employee under the act, having theretofore lost a hand, became entitled, upon the loss of the remaining hand while such employee, to the compensation for permanent total disability and not to the lesser compensation for permanent partial disability. . . . Manifestly, the law was a hindrance to those who, having lost a hand or other member, sought to become employees under the act, because the loss of the remaining member subjected the employer to the payment of a compensation substantially greater than it would in case the employee had had the two members. After the decision . . . the legislature by an amendment to subdivision 6 [now 7] of section 15 enacted that 'an employee who is suffering from a previous disability shall not receive compensation for a later injury in excess of the compensation allowed for such injury when considered by itself and not in conjunction with the previous disability.' . . . The provisions of section 15 were supplemented in 1916 by the addition of subdivision 7. . . . The evident and clear purpose of the subdivision was to remove a condition, as between employers and partially disabled employees, inconsonant with the spirit of the act and, perhaps, unjust, through the creation of a state fund contributed to by the insurance carriers and, as the permanent total disability arose, accessible to any member of the entire prescribed class of employees so disabled."

[5] The Laws of 1920, c. 760, added to the Education Law as Article 47, a "Rehabilitation Law," by which the State accepted the provisions of the federal appropriation for vocational training of disabled persons, made an additional appropriation therefor to the state department of education, and required the industrial commission to report to that department all cases of injuries received by employees which might result in need of rehabilitation.

receive additional compensation necessary for his maintenance;" but not exceeding ten dollars a week. "The expense shall be paid out of a special fund created in the following manner: The insurance carrier shall pay to the state treasurer for every case of injury causing death, in which there are no persons entitled to compensation, the sum of five hundred dollars. The state treasurer shall be the custodian of this special fund and the industrial commissioner shall direct the distribution thereof." [6]

In February, 1923, an employee of the Sheehan Company in one of the hazardous occupations, sustained, in the course of his employment, accidental injuries resulting in his death. He left no survivors entitled to compensation. The State Industrial Board, in an appropriate proceeding under the Compensation Law, awarded the State Treasurer against the Sheehan Company, as employer, and the Aetna Life Insurance Company, as insurance carrier, two sums of five hundred dollars each, pursuant to subdivisions 8 and 9, respectively, of § 15. On successive appeals these awards were affirmed, without opinions, by the Appellate Division of the Supreme Court and by the Court of Appeals. 206 App. Div. 726; 236 N. Y. 579. The record was remitted to the Supreme Court, to which this writ of error was directed. *Hodges* v. *Snyder*, 261 U. S. 600.

The companies contend that these subdivisions are in conflict with the Fourteenth Amendment and that the awards made thereunder deprive them of their property without due process and deny them the equal protection of the laws.

---

[6] This provision, which was formerly subdivision 8 of § 15, was incorporated into the Compensation Law by the Laws of 1920, c. 760; the amount of the payment originally prescribed being nine hundred dollars. The constitutionality of this subdivision, in its original form, was sustained in *Watkinson* v. *Hotel Pennsylvania*, 231 N. Y. 562 (affirming, without opinion, 195 App. Div. 624).

The substance of these two provisions is that when an injury causes the death of an employee leaving no beneficiaries, the employer or other insurance carrier shall pay the State Treasurer the sum of five hundred dollars for each of two special funds: one to be used in paying additional compensation to employees incurring permanent total disability after permanent partial disabilities; and the other, in the vocational education of employees so injured as to need rehabilitation. The use of such special funds for such purposes is an additional compensation to the employees thus injured, over and above that prescribed as the payments to be made by their immediate employers. Such additional compensation is neither unjust nor unreasonable. Thus, an employee who, having lost one hand in a previous accident, thereafter loses the second hand, is, obviously, not adequately compensated by the provision requiring his employer to make payment for the loss of the second hand, independently considered; [7] the total incapacity finally resulting from the loss of both hands working much more than double the injury resulting from the loss of each separate hand considered by itself. In such a case, however, as in the case of an injury requiring vocational rehabilitation, it is the theory of the law that such additional compensation to the injured employee should not be required of the particular employer in whose service the injury occurred, but should be provided out of general funds created by payments required of all employers when injuries resulting in the death of their own employees leaving no beneficiaries, do not otherwise create any liability under the Compensation Law.

We do not think that the due process clause of the Fourteenth Amendment requires that such additional compensation to injured employees of the specified classes,

[7] Note 2, *supra*, p. 373.

should be paid by their immediate employers, or prevents the legislature from providing for its payment out of general funds so created. In *Mountain Timber Co.* v. *Washington,* 243 U. S. 219, 244, it was held that a Workmen's Compensation Act did not deprive the employers of due process, because the compensation to the injured employees and their surviving dependents was not made by their immediate employers, but out of state funds to which the employers were required to make stated contributions, based upon definite percentages of their payrolls, in different groups of industries classified according to hazard. On this question the Court said: "To the criticism that carefully managed plants are in effect required to contribute to make good the losses arising through the negligence of their competitors, it is sufficient to say that the act recognizes that no management, however careful, can afford immunity from personal injuries to employees in the hazardous occupations, and prescribes that negligence is not to be determinative of the question of the responsibility of the employer or the industry. Taking the fact that accidental injuries are inevitable, in connection with the impossibility of foreseeing when, or in what particular plant or industry they will occur, we deem that the State acted within its power in declaring that no employer should conduct such an industry without making stated and fairly apportioned contributions adequate to maintain a public fund for indemnifying injured employees and the dependents of those killed, irrespective of the particular plant in which the accident might happen to occur. In short, it cannot be deemed arbitrary or unreasonable for the State, instead of imposing upon the particular employer entire responsibility for losses occurring in his own plant or work, to impose the burden upon the industry through a system of occupation taxes limited to the actual losses occurring in the respective classes of occupation."

So in the present case the State acted within its power, and neither arbitrarily nor unreasonably, in providing that a portion of the compensation to injured employees in cases coming within the provisions of subdivisions 8 and 9, should not be required in the form of direct payments by their particular employers but should be made from public funds established for that purpose by payments from employers whose own employees leave no beneficiaries.

The payments thus required are not unfair and unreasonable in amount. The aggregate for the two funds is one thousand dollars. This is much less than the maximum payment which may be required according to the scales in case the employee leaves survivors entitled to death benefits, and seems not to exceed, if it equals, the average amount of the payments required in such cases.

Nor are these provisions in conflict with the equal protection clause. The contention of the companies is that the prescribed awards are in the nature of a tax imposed upon the happening of a contingency, and are of unequal application; that is, that they are imposed only upon such employers as happen to have employees who are killed without leaving survivors entitled to compensation. However, this is not a discrimination between different employers, but merely a contingency on the happening of which all employers alike become subject to the requirements of the law. All are required to contribute, under identical conditions, to these special funds. *State Indust. Comm.* v. *Newman, supra,* p. 368.

The judgment of the Court of Appeals of New York is

*Affirmed.*